Gentzler Tool and Die Corp. *and* Freight Drivers, Dock Workers and Helpers, Local Union No. 24, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 8-CA-16014

25 November 1983

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 21 March 1983 Administrative Law Judge Thomas A. Ricci issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Gentzler Tool and Die Corp., Greensburg, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The General Counsel's motion for reconsideration of the Board's 3 June 1983 Order rescinding its Order of 17 May 1983, in which the Respondent's exceptions and supporting brief were rejected as untimely filed, is hereby denied as lacking in merit.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's resolutions unless the clear preponderance of all of the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] The judge inadvertently failed to note that interest on any economic benefits lost by employees as a result of the Respondent's unlawful refusal to give effects to the terms of the collective-bargaining agreements shall be computed and paid in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge: A hearing in this proceeding was held at Akron, Ohio, on January 27, 1983, on complaint of the General Counsel against Gentzler Tool and Die Corp. (the Respondent or the Company). The complaint issued on October 5, 1982, on a charge filed on August 20, 1982, by Freight Drivers, Dock Workers and Helpers, Local Union No. 24, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union). The issues presented are whether the Respondent violated Section 8(a)(5) by refusing to bargain with the Union. Briefs were filed after the close of the hearing by the General Counsel and the Respondent.

Upon the entire record, and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

This Company, an Ohio corporation, is engaged in the stamping of metal parts at its sole facility in Greensburg, Ohio. Annually, in the course of its business, it ships goods valued in excess of $50,000 directly to out-of-state locations. I find that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

This is a refusal-to-bargain case, not literally, but in a very exact and technical sense. The Union was certified as the exclusive bargaining agent in August 1981, and the Respondent's authorized representatives always met with the union representatives when requested to do so. Indeed, even as late as the time of the hearing a year and a half after the certification, the Respondent still was willing to meet with union representatives to keep on talking. The trouble is that while holding successive meetings with the union agents, ostensibly extending exclusive recognition and continuing to talk, the Company changed certain substantive conditions of employment unilaterally, as though the employees' bargaining agent did not exist. Part of the employees' work compensation was paid health and life insurance. The Company just called them together, discussed its desires with them, and told them it was changing its insurance company and that thereafter the employees would have to pay, out of their pockets, for the insurance. And they did start paying for it. By such conduct the Respondent revealed without question its indifference to the statute and to its duty to recognize the Union as the spokesman of its employees. No need to belabor the details of this aspect of the case because at the hearing the Respondent's representative formally conceded the change in insurance made by his client was a direct flouting of the law and an unfair labor practice.

The Company changed insurance companies twice, first from Dominion Life Insurance Co. to Durham Life Insurance Co., and then from Durham Life Insurance to Allstate Insurance Company. The employees had never paid for such insurance before, but have since been paying for it. I find that by discussing the proposed changes with the assembled employees called together for that purpose, without the presence of the union representatives, and by making each of the two changes in conditions of employment, the Respondent violated Section 8(a)(5) of the Act. *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678 (1944); *NLRB v. Harrison Mfg. Co.*,

682 F.2d 580 (6th Cir. 1982). It must reimburse each of the employees involved for all moneys they have since paid for such insurance, and it must restore insurance to them without contribution by the employees, until such time as it first bargains in good faith with the Union about that subject.

The other part of the case also involves an indirect form of refusal to bargain. The parties met a number of times and talked about their conflicting demands as to what should properly be set out in a collective-bargaining agreement. According to the complaint, the Company stated its final and adamant position on all items fully discussed, the Union yielded and the employees voted to accept that offer, but, after this had been done, the Respondent refused to sign the agreement. This sort of conduct, too, if it did happen, is called a refusal to bargain, and a further violation of Section 8(a)(5). Unlike the first part of the case, there is a dispute between the parties as to whether there really had been an agreement reached.

In September 1981, after the Union had been certified, the Respondent hired a lawyer to bargain on its behalf. That man, Childs, together with Paul Gentzler, the owner, and the owner's son, David Gentzler, met twice during September with Adams, the Union's business agent, and three employees who constituted the employee committee. They discussed their respective proposals in detail. The Company then replaced Childs as its spokesman and hired Harvey Rector, and his son, Brian Rector, to continue the negotiations where Childs had left off. The Rectors, accompanied by the owner, met with the union people six or seven times between October 1981 through December of that year. The parties continued the bargaining process, going on from where it had been reached with Childs. They exchanged summaries of matters as they stood and restated their continuing demands. As they proceeded they made notations on their respective documents, noting agreements and continuing disagreements. But no final agreement was reached.

With this the parties agreed to meet with a Federal mediator, and did so in December. At the request of the Union for the Company's final proposal, the Respondent prepared a document called "Company Proposal" and gave it to the Union; it was received in evidence. It was intended to represent the Company's summary of all issues remaining in dispute between the parties. It reads as follows:

Company Proposal

1. Open Shop.
2. Wages: General increase of fifty (50) cents per hour.
3. One year contract.
4. Holidays: Paid. Sixty (60) day waiting period.

New Year's Day
Good Friday
Memorial Day
Fourth of July
Labor Day
Thanksgiving
Christmas

5. Insurance: Dominion Life (60 day waiting period) covers 100% of 120 days semi-private, other expenses unlimited. Paid by the employer.
6. Life Insurance:

Class B . . . $10,000
Class C . . . 6,000

7. Pension Plan: (voluntary) Eligible after one year. Employee contributes 2% of annual earnings deducted weekly. Employer contributes approximately 2/3 more than employee based on age and annual earnings. Employee is eligible to both his and the employer contributions after five (5) years, upon termination of employment, or at age 65.
8. Company proposal includes what the parties agreed to during negotiations.

At the start of the hearing Harvey Rector admitted he had been authorized to submit this as the Company's final proposal, and that it had been prepared by the Company for that purpose.

The parties conferred three times with the assistance of the mediator but the Company held firm to its final proposal in every detail. They reviewed and discussed every single item listed in the cross-proposals, and discussed at length the list of seven still disputed items in the final company proposal. When the last meeting took place in early May 1982 the Company had not moved an iota from its "Company proposals." With this, Adams, for the Union, offered to submit the final proposal to the membership for ratification. Rector agreed it was a good idea. In mid-May the employees voted to ratify that basic proposal. The next day, Adams called Harvey Rector to inform him of the vote. It was agreed that the Union would have the contract printed and prepared for signatures. Sometime in early June Harvey Rector came to the union hall and picked up the printed contract from Adams.

Three weeks later the company representative returned to the union hall and told Adams the Company would not sign the contract because it did not represent, as written, what had been agreed upon. The Union then filed its charge in this case, and the complaint alleges the refusal to sign was a violation of Section 8(a)(5).

A number of alleged variances between the contract as written up by Adams and what the Respondent now says was the continuing status of dispute between the parties were advanced in defense at the hearing. I find, considering the record in its entirety, that there was no merit in any of them as the reasons offered by the Respondent in justification for not signing the contract as written.

One of the Union's initial proposals related to the length of the workweek and workday. It read as follows:

Work Day—Work Week

The standard guaranteed workweek shall be forty (40) hours per week, and the standard guaranteed workday shall be eight (8) hours per day.

Section 1. Work shall be scheduled for five (5) consecutive days; Monday through Friday. All employees shall be guaranteed forty (40) hours work.

> In any week in which paid holidays fall, the guaranteed workweek shall be reduced by eight (8) hours for each such holiday . . . .

With the Company objecting to the use of the word "guaranteed" in this language, the Union agreed to change it to "normal" instead. In writing up the final draft, Adams' secretary changed the word "guaranteed" to "normal" three of the times it appeared in the agreed-upon clauses. Because of a clerical error, the secretary overlooked the fourth use of the word "guaranteed." When Rector came back to Adams to say the Company refused to sign and that this was one of his reasons—leaving the word guaranteed in the contract—Adams immediately admitted the error and offered to correct that instance too, and change the word guaranteed to normal. Rector would have none of that. It was an obvious stall to find a fictitious excuse for not signing the contract. *Reppel Steel & Supply Co.*, 239 NLRB 358 (1978).

The Company's second objection to the contract tells a more revealing story. Under the "management rights" article of the contract the Company had agreed to the following language: "Employees will abide by the rules that are put in by the Company and agreed to by the Union." Rector said plainly at the hearing he had agreed to this language. Yet when he returned the contract to Adams, 3 weeks after studying it, and refused to sign, he handed the union agent a detailed set of work rules and said they must be negotiated and agreed upon in detail before it could be said there was agreement on any contract. If that were the case, how could the employees have voted on ratification of a final contract, an arrangement which Rector said he favored having them do? Besides, the "Company proposal" which Rector was happy to have put before the employees for their final approval listed the remaining disagreements but said nothing about any other remaining issues.

The more likely explanation of such attempts to create issues when there really were none, either articulated or written down, is that the Respondent felt confident, given its insistence on the seven items listed in this final proposal, that the employees would refuse to ratify. Faced with a final result, it simply looked for anything that could create further obstacles to any contract. I find this belated argument in justification of its refusal to sign the contract an absolute repudiation of the agreed-upon clause, a deliberately contrived obstacle to any collective-bargaining agreement.

Another provision in the contract Adams drew up for signature was on the subject of vacations. Rector's contention at the hearing was that the Respondent had not agreed to that clause. By the Respondent, he made clear, he meant Gentzler, the owner. But in the bargaining, which was carried on for the Respondent, Rector agreed with the vacation clause exactly as it was written. He admitted this directly as a witness. He tried to retract his agreement on the ground that he had mistakenly "assumed" Childs, who preceded him in the negotiations, had agreed to the clause, and that he Rector only agreed for that reason. What his position amounted to is that when an employer sends an authorized representative to the bargaining table, and they agree to certain things, it is all subject to later approval by the principal. What better way of stalling forever any final agreement than that? This is to say nothing of the fact that Gentzler was with Rector most of the time while he was doing the bargaining, and therefore heard him agree to the vacation provision.

Insisting, despite his admission, it was Childs who had agreed to the vacation provision, Rector also contended the lawyer had no authority to accept the clause as written because he had not been so authorized by Gentzler. He said Gentzler told him that when he brought the contract back for signature. When either party to the collective-bargaining process sends an authorized representative to speak on his behalf in the negotiations, this means he speaks for his principal. And especially is this fact clear when the representative agrees to send the contract reached at the bargaining table to the employees for ratification. If the ratification vote only sends the contract back to the hidden principal for critical reappraisal, as the Respondent would have it here, the entire process becomes a mockery. Restated, it means there can never be an end to the collective bargaining, and this is precisely what I find this Respondent was seeking to achieve in this case.

Lastly, Rector advanced as a further justification for his client's refusing to sign the contract the fact it provided for both paid funeral and paid jury duty leave. He testified that during the bargaining it had been agreed the Union would chose one over the other, but would not get both benefits at the same time. Adams and Karen Gardner, the employee member of the bargaining committee who was always present, gave completely contradicting testimony—saying directly Rector had agreed to both leaves. I credit them against Rector and Gentzler.

Rector began his testimony on this subject by saying, "I thought they had chosen funeral leave." He was then shown a written proposal on jury duty offered by the Union during the negotiations. It was received in evidence as the General Counsel's Exhibit 3. It is marked "OK" in the margin and bears his and Adams' initials. There is no qualification on it indicating it might be an alternative benefit depending on the surrender of any other demand. Had this unqualified agreement conceding jury duty benefit been tied to any concession by the Union, surely some notation to that effect would have been added to it.

The Respondent offered another copy of the same written proposal for jury duty benefit, apparently given to Rector when it was first placed in the hands of the Company. It was received in evidence as the Respondent's Exhibit 1. It bears the handwritten date "10/19," with the marginal note "hold for choice." Clearly that comment was written on the Respondent's Exhibit 1 before agreement was reached, as indicated by the General Counsel's Exhibit 3, for several parts of the original typing are drawn through as eliminated in the latter. It therefore must have been discussed and agreed to after its original submission on October 19. And Adams' notes of the October 19 meeting between him and Rector show the notation "okay" next to "funeral leave—3 [3] days."

My credibility resolution on this point—that, as Adams testified, in the end Rector did not insist on a choice between funeral and jury leave—is based not only on these documents but also on the general tenor of Rector's testimony. Repeatedly he argued on the stand instead of answering straight questions, and many times simply refused to answer what was asked. At one point Rector said he "assumed" the Union had agreed to a choice. His "company proposal," the one he was glad to have submitted to the employees' vote, while purporting to list all remaining issues, says nothing about jury duty choice, or any other item except the precise seven enumerated ones. I deem that document in evidence, the Company's final proposal, which went to the employees for ratification, and which on its face shows no other issues except the listed seven, the determining factor in this case.

I find that, by refusing to sign the agreed-upon contract as submitted by the Union in June 1982, the Respondent violated Section 8(a)(5) of the Act. *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941).

IV. THE REMEDY

The Respondent must be ordered to cease and desist from committing further unfair labor practices. It must be ordered to reimburse its employees for all moneys paid for health and life insurance since the time it unilaterally changed its established insurance system, and it must continue the insurance benefits without contribution by the employees until it bargains on the subject with the Union in good faith. The Respondent must also be ordered to sign the agreed-upon contract it illegally refused to execute in June 1982. The record as made does not show whether the employees would benefit economically under the terms of that contract compared with what they enjoyed without it. If it should appear, at the compliance stage of this proceeding, that they were denied economic benefits because the contract was not put in effect in June 1982, the Respondent must make them whole for any such losses. Beyond that, the Respondent must be ordered to cease and desist from violating the statute in any other manner.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. By dealing directly with its employees represented by the Union while bypassing their established bargaining agent, and by unilaterally changing conditions of employment, the Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

2. By refusing since June 1982 to execute the agreed-upon collective-bargaining agreement and to give effect to its terms and provisions, the Respondent has refused to bargain collectively with the Union and has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following

ORDER[1]

The Respondent, Gentzler Tool and Die Corp., Greensburg, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Dealing directly with its employees represented by the Union as their established bargaining agent, or discussing conditions of employment with them while bypassing their established bargaining agent.

(b) Unilaterally changing conditions of employment while bypassing the established bargaining agent of its employees.

(c) Refusing to execute the collective-bargaining agreement agreed upon with the Union in June 1982, and refusing to give effect to the terms and provisions of that agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercised of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Execute forthwith the collective-bargaining agreement with the Union which was agreed upon during June 1982, and which the Respondent refused to sign about that time.

(b) Give effect to the terms and provisions of that collective-bargaining agreement retroactively to June 1982.

(c) Make whole its employees for their loss of wages and other benefits, which are provided for in that agreement, for the period on and after June 1982, with interest.

(d) Reimburse its employees for any moneys they have contributed since the commission of the Respondent's unfair labor practices toward payment of their health and life insurance benefits.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of moneys due under the terms of this Order.

(f) Post at its Greensburg, Ohio facility copies of the attached notice marked "Appendix."[2] Copies of the

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the Na-

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notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 8 in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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tional Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT deal directly with our employees, bypassing their established bargaining representative, about conditions of employment.

WE WILL NOT unilaterally change conditions of employment while bypassing the established union representative of our employees.

WE WILL NOT refuse to execute an agreed-upon contract with the Union.

WE WILL reimburse all employees for moneys paid toward their health and life insurance benefits since 1982.

WE WILL, upon request of the Union, execute the collective-bargaining agreement which we agreed to in June 1982 with Freight Drivers, Dock Workers and Helpers, Local Union No. 24, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed under Section 7 of the Act.

GENTZLER TOOL AND DIE CORP.